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10 UNITED STATES OF AMERICA

11 UNITED STATES DISTRICT COURT

12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 v.

16 MICHAEL ANTHONY TREVINO,

17 Defendant.

No. 18-CR-00335-AB-09

GOVERNMENT'S SENTENCING POSITION  
FOR DEFENDANT 09 MICHAEL ANTHONY  
TREVIN

**Hearing Date: March 18, 2022**

19  
20 Plaintiff United States of America, by and through its counsel  
21 of record, the United States Attorney for the Central District of  
22 California and Assistant United States Attorney Patrick Castañeda,  
23 hereby files its sentencing position with respect to defendant  
24 Michael Anthony Trevino.

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This sentencing position is based upon the attached memorandum of points and authorities, the files and records in this case, and such further evidence and argument as the Court may permit.

Dated: March 4, 2022

Respectfully submitted,

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/s/  
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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

On May 31, 2018, the government charged defendant Michael Anthony Trevino ("defendant") and 24 codefendants with, inter alia, a drug conspiracy. (CR 1.) On November 6, 2020, pursuant to a plea agreement, defendant pleaded guilty to count one of the indictment: conspiracy to distribute, and to possess with intent to distribute, controlled substances. (CR 499, CR 504.) Specifically, defendant admitted to possessing with intent to distribute kilogram quantities of cocaine. (CR 499 at 8-9.)

On September 23, 2021, the United States Probation and Pretrial Services Office ("USPO") filed its Revised Presentence Investigation Report ("PSR"). (CR 660.) Therein, the USPO concluded that: (1) defendant's total offense level was 22, and (2) defendant's criminal history category was III, resulting in a guidelines range of 51 to 63 months imprisonment. (PSR ¶¶ 17-45, 84.) The USPO identified no factors that would warrant a departure from the Sentencing Guidelines range. (*Id.* ¶ 98.) Nevertheless, the USPO recommends what amounts to a seven-level variance from the low end of the applicable guidelines range (51 months' custody) down to a 24-month custodial sentence. (CR 659 at 1.)

The government agrees with the USPO's guidelines calculations but recommends a two-level, rather than a seven-level, variance. As the parties agreed in the plea agreement and as noted in the PSR, in recognition of defendant's timely decision to plead guilty and thus lessen the burden on the justice system during the COVID-19 pandemic, which has created an unprecedented backlog of cases, the government recommends this two-level downward variance. (PSR ¶¶ 4, 85.) This

1 would result in a total offense level of 20; given defendant's  
2 criminal history category of III, his Guidelines range is 41 to 51  
3 months' imprisonment. (PSR ¶¶ 4, 85.) The government further  
4 submits that a low-end sentence of 41 months' imprisonment and two  
5 years' supervised release is sufficient, but not greater than  
6 necessary, to serve the sentencing purposes of 18 U.S.C. § 3553(a).

## 7 **II. DEFENDANT'S CRIMES**

8 The facts relevant to sentencing are accurately set forth in  
9 both the PSR and the parties' plea agreement. (CR 499 at 8-9.) In  
10 summary, defendant participated in a drug trafficking conspiracy by  
11 possessing and transporting kilogram quantities of cocaine in the  
12 United States for a Mexico-based drug trafficking organization.  
13 (Id.) In that role, on September 7, 2016, defendant agreed to  
14 transport and in fact transported approximately 7.87 kilograms of  
15 cocaine intended for further distribution. (Id.) To do so,  
16 defendant met an unindicted co-conspirator in a parking lot and  
17 knowingly received an "Idaho Potatoes" box containing eight bricks of  
18 cocaine, which he transported in his car until being stopped by law  
19 enforcement. (Id.) At all relevant times, defendant knew that he  
20 possessed distribution quantities of illegal drugs. (Id.)

## 21 **III. DEFENDANT'S OFFENSE LEVEL**

22 The USPO determined that: (1) defendant's base offense level was  
23 30, under USSG §§ 2D1.1(a)(5) and 2D1.1(c)(5); (2) defendant's  
24 mitigating role warranted a three-level decrease under USSG §§ 3B1.2;  
25 and (3) defendant's timely acceptance of responsibility warranted a  
26 three-level decrease under USSG § 3E1.1.<sup>1</sup> (PSR ¶¶ 17-32.)

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27  
28 <sup>1</sup> The government hereby moves for a one-level decrease pursuant  
to USSG § 3E1.1(b).

1 Defendant's satisfaction of the five safety-valve criteria warrant an  
2 additional two-level deduction under USSG § 2D1.1(b)(18). (PSR ¶¶  
3 20-22.)

4 The government agrees with the PSR's Guidelines calculations.  
5 In addition, defendant pled guilty at a pivotal moment, when the  
6 COVID-19 pandemic has created an unprecedented crisis in the criminal  
7 justice system. (PSR ¶¶ 4, 100.) Accordingly, the parties agree  
8 that defendant is entitled to a two-level downward variance in  
9 recognition of his timely decision to lessen the burden on the court  
10 system during this uniquely challenging time. (Id.) This two-level  
11 downward variance results in a total offense level of 20.

#### 12 **IV. DEFENDANT'S GUIDELINES RANGE**

13 Defendant is in criminal history category III. (PSR ¶¶ 34-78.)  
14 An offense level of 20 places defendant's Guidelines range at 41 to  
15 51 months' imprisonment, and two to five years' supervised release.  
16 See USSG §§ 5A, 5D1.2(a); 18 U.S.C. § 3553(f).

#### 17 **V. THE GOVERNMENT'S RECOMMENDED SENTENCE**

18 The government respectfully recommends that the Court sentence  
19 defendant at the low end of that range: 41 months' imprisonment, two  
20 years' supervised release, and a \$100 special assessment.<sup>2</sup>

##### 21 1. Nature and Circumstances of the Offense, § 3553(a)(1)

22 The nature and circumstances of defendant's crime weigh in favor  
23 of a Guidelines-range sentence. Defendant knowingly joined a  
24 conspiracy to distribute kilogram quantities of cocaine. In  
25 furtherance of that conspiracy, he knowingly possessed with intent to  
26 distribute 7.87 kilograms of cocaine intended for further  
27

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28 <sup>2</sup> A special assessment of \$100 is mandatory. 18 U.S.C. § 3013.

1 distribution in his car. Such a crime is very serious and  
2 defendant's sentence should reflect that.

3 2. History and Characteristics of Defendant, § 3553(a)(1)

4 Defendant's criminal history contains multiple crimes resulting  
5 from substance-related conduct, which are adequately accounted for in  
6 his Criminal History Category of III.

7 Defendant's history and characteristics provide some mitigation.  
8 Defendant's father was tragically murdered when defendant was just  
9 four years old. (PSR ¶ 50; CR 659 at 4.) After his father's death,  
10 defendant moved in with his grandmother in an active gang area, where  
11 the home was hit with stray bullets on more than one occasion. (PSR  
12 ¶ 51; CR 659 at 5-6.) While his mother struggled to provide for the  
13 family and his grandmother could not communicate in English,  
14 defendant had little accountability growing up and started using  
15 drugs and alcohol at a young age hindering his educational and  
16 vocational prospects. (PSR ¶¶ 52-54; 62-67; CR 659 at 5.) Despite  
17 these challenges, defendant appears to have a supportive family,  
18 which includes his fiancé, a four-year old son, and another child due  
19 in July. (PSR ¶ 57-58; CR 659 at 5.) On this record, a sentence no  
20 greater than the low end of the Guidelines is warranted.

21 3. Need for Deterrence and to Promote Respect for the  
22 Law, § 3553(a)(2)

23 The government's recommended sentence would appropriately  
24 promote respect for the law, protect the community, and deter  
25 defendant and others who would seek to emulate his conduct.  
26 41 months in custody would provide defendant sufficient time to  
27 consider his actions in light of their substantial consequences.  
28

1                   4.    Need for the Sentence to Avoid Unwarranted  
2                   Disparities, § 3553(a)(6)

3           Section 3553(a)(6) requires the Court to minimize sentencing  
4   disparities among similarly-situated defendants. One way of doing so  
5   is to correctly calculate the Guidelines range. See United States v.  
6   Treadwell, 593 F.3d 990, 1011 (9th Cir. 2010) ("Because the  
7   [g]uidelines range was correctly calculated, the district court was  
8   entitled to rely on the [g]uidelines range in determining that there  
9   was no 'unwarranted disparity' . . . ."); Gall v. United States, 552  
10   U.S. 38, 54 (2007) ("[A]voidance of unwarranted disparities was  
11   clearly considered by the Sentencing Commission when setting the  
12   Guidelines ranges."). Here, under the correctly-calculated  
13   Guidelines range, other defendants "with similar records who have  
14   been found guilty of similar conduct" as defendant - and who have  
15   also earned a two-point downward variance for timely pleading guilty  
16   during the unprecedented burden on the justice system created by the  
17   COVID-19 pandemic - can expect a sentence between 41 and 51 months.  
18   As such, the government's recommended sentence at the low-end of that  
19   range avoids an unwarranted disparity with similarly-situated  
20   defendants.

21   **VI. CONCLUSION**

22           For the foregoing reasons, the government respectfully  
23   recommends that defendant be sentenced to 41 months' imprisonment,  
24   two years' supervised release, and a \$100 mandatory special  
25   assessment. This sentence is "sufficient, but not greater than  
26   necessary, to comply with the purposes enumerated in 18 U.S.C.  
27   § 3553(a)(2)." 18 U.S.C. § 3553(a).  
28